originally taken over, reserved to Congress its future disposition (Section 12, Trading with the Enemy Act). The power so reserved to Congress has been exercised by that body in a series of Acts granting partial returns and finally terminating in the Settlement of War Claims Act whereby Congress revested in the former enemies title to the property upon condition that they consent to the temporary retention of 20%. By this Act, Congress, in revesting the original owners with the title and right of possession in the property, exhausted the powers reserved to it in the Trading with the Enemy Act, except as to the 20% and any attempt on the part of Congress now to withhold the property from the owners thereof amounts to an effort to recapture German property long after the war has ceased and after the right of seizure under the war power has terminated.

Upon the argument the question was asked whether action by the President was a condition precedent to the owners' right of repossession of the property. An examination of Section 9 (a) and 9 (c) of the Trading with the Enemy Act, as amended by the Settlement of War Claims Act, clearly demonstrates that such action is unnecessary, and therefore not a condition precedent to the right of repossession.

Furthermore, in petitioner's reply brief (p. 9), it is stated that we question the statement made in the petitioners' brief that they were advised by the Secretary of State that the German Government had made no claim that the Resolution is in conflict with its treaties.

It appears from the letter of the Acting Secretary of State (p. 16 petitioners' reply brief) that the German Government did make such a protest formally but orally.

POINT I.

The rights acquired by respondent, an alien friend, were subject to our Constitution and could not thereunder become the subject of reprisal.

Section 11 of the Settlement of War Claims Act of 1928 (45 Stat. 254) amended subsection (b) of Section 9 of the Trading with the Enemy Act as amended so as to give to German nationals, upon filing the consent under subsection (m) of Section 9, as thus amended, the same rights as to 80% of their property, as non-enemies were granted under Section 9 of the original Trading with the Enemy Act.

Certainly, as to property of an alien non-enemy, withheld because our Government had seized the same under the mistaken belief that it was enemy property, no power short of war could authorize our Government to subject that property to seizure because of the acts of the owner's government, such as the nonpayment of a public debt owing by that government.

Our former Allies, Great Britain and France, have defaulted in their obligations to our Government, and we do not believe that there is anyone who will contend that the property of a few of its nationals could be seized in peace time under this paramount power mentioned by the petitioners on pages 11 to 15 of their reply brief.

In their reply brief the petitioners refer to the actions of other governments. Nothing is better known than that these other governments, such as Great Britain and its Parliament, are not subject to any written constitution.*

*Burgess, Political Science & Constitutional Law, Vol. 2, p. 364.

The effort to overcome the difficulties of foreign exchange transfer, based partly on agreements, bears no analogy to the present case. But the beneficent provision of Amendment 5 of our written Constitution prohibits the seizure of property of an alien friend, without just compensation.

Russian Volunteer Fleet Corp. v. *U. S.*, 282 U. S. 481.

Under *Brown* v. *United States*, 8 Cranch. 110, even war itself does not authorize confiscation. It requires an act of Congress to authorize the President to exercise the privilege of confiscation.

Speaking of the acts of French spoliation, the Court of Claims in *Hooper* v. *United States*, 22 Ct. Cl. 408, says the following (p. 456):

> "To term the decrees of France and the acts of their privateers under them 'acts of reprisal' does not alter the facts or the legal position. That position has been defined by the Supreme Court of the United States as limited partial war.* We, following the path indicated by that tribunal, have defined it as 'limited war in its nature similar to a prolonged series of reprisals.'" (Asterisk ours.)

Therefore, under this language, what the petitioners are advocating is limited warfare against private property by authorizing the reseizure of private property of a friendly alien. Such is not permitted under the law, as pointed out by this Court in *Chae Chan Ping* v. *U. S.*, 130 U. S. 581, where the court referred to property rights in the following language:

**Bas* v. *Tingy*, 4 Dallas 322.

> "The rights and interests created by a treaty, which have become so vested that its expiration or abrogation will not destroy or impair them, are such as are connected with and lie in property, capable of sale and transfer or other disposition, * * *"

In fact, Public Resolution #53, involving the reseizure of German property, may be regarded a violation of the present Treaty between the United States and Germany (44 Stat. (Part 3) 2132) which provides that the property of German nationals

> "shall not be taken without due process of law and without payment of just compensation".

As authority for the proposition of this right of reprisal, petitioners refer to Hyde's International Law, Chiefly as Interpreted and Applied by the United States, Volume Two, 174-179, where the author says (p. 179):

> "Notwithstanding a disclaimer of hostility against a State upon which reprisals are made, the nature of the procedure is one still calculated to produce war. Hence countries not desirous of bringing about such a condition are reluctant to have recourse to such action unless the delinquent State is so inferior in point of military or naval resources that its indignation is not to be dreaded. Reprisals are essentially the remedy of the strong against the weak. It is unlikely, therefore, that the United States will ever again make use thereof, unless the State itself has suffered a national affront through a grave violation of international law, and unless its adversary remains stolidly indifferent as to its duty to make amends. It is believed, moreover, that both policy and sound practice discountenance the employment of reprisals so long as any amicable mode of obtaining justice remains unexhausted."

In the past few weeks there has been much argument that under the alleged justification of dealing with foreign affairs, the Government can do anything it likes, even with respect to private property. *United States* v. *Curtiss-Wright Export Corporation*, decided December 21, 1936, specifically distinguished the power of the Executive to act at his discretion in foreign affairs and in domestic affairs. It did not authorize him to violate private property rights in the United States which, it must be assumed, still enjoy the protection of the Fifth Amendment. In fact, the Court said, with reference to the power of the President in international relations, that the same

> "must be exercised in subordination to the applicable provisions of the Constitution".

To exert an act of reprisal, is an act of war.

Jefferson stated that

> "The making a reprisal on a nation is a very serious thing. Remonstrance and refusal of satisfaction ought to precede; and when reprisal follows, it is considered an act of war, and never failed to produce it in the case of a nation able to make war; * * *." (Opinion of May 16, 1793, 7 Jefferson's Works, 628; Moore's Digest 7, 123.)

Attorney-General Randolph in 1793 stated:

> "The law of nations does not allow reprisals, except in cases of violent injuries directed and supported by the state, and the denial of justice by all the tribunals and the prince." (Moore's Digest 7, 120.)

Congress did not purport to exercise the war power or the reprisal power in enacting the Public Resolution #53.

They simply undertook to amend the Settlement of War Claims Act unilaterally by withholding what they had already granted. The reprisal power has never been exercised by the Congress of the United States and it should not be deemed to have been invoked except on clear demonstration that that was the intention. Even so, when done in time of peace, the private property of a few scattered individuals cannot be selected for the exertion of this power.

It is true that President Jackson in 1834 did *threaten*, if France did not appropriate monies it had agreed to appropriate, that he *might* recommend to the Congress the seizure of the property belonging to the French Government, its citizens or subjects. (Moore's Digest 7, 124.) But this was done at the instigation of parties in France who desired this pressure to be exerted on the French Government. (Moore's Digest 7, 124.) The very suggestion aroused violent protest in the United States and Senator Clay for the Committee on Foreign Relations declined to approve the suggestion. (Moore's Digest 7, 126, 127.)

In referring to Jackson's proposal, which Congress repudiated and never acted upon, Mr. Gallatin, our former Secretary of the Treasury and Minister to France, stated in 1835:

> "The British, in case of war, seize every vessel in their ports belonging to the enemy. With this single exception, the relic of an age of barbarism and piracy, and which makes part of the King's droits of admiralty, I am not aware that any civilized nation does at this time, even in case of war, seize the property of private individuals which in time of peace had been trusted to the hospitality and good faith of the country. I am certain that the United States never were guilty of such an act as a

nation, neither in 1793, when the British were plundering without notice our West India trade, and when an unsuccessful motion to that effect was made, never to be again repeated, nor in 1798, at the time of the greatest excitement and quasi-war against France, nor when war was declared against England, in 1812. Since the motion of 1793, which, if brought to the test, would have been indignantly rejected, during the various periods when our trade was exposed to the depredations of one or both the belligerents, amongst all the devices and expedients proposed in order to avoid war, never was the iniquitous proposal of seizing property confided to the protection of our laws again suggested. And I trust that, whilst so much is said of what is due to the honor of the nation (how applicable to the present state of things is another question), such truly dishonorable act is not in contemplation.

"The preceding observation is strictly correct with respect to seizures in time of peace, and is intended to show the gross impropriety of supposing that such seizures are a peace measure. I admit that they have sometimes taken place in time of war. Such was the sequestration by several of the States of the British debts during the war of independence. Russia also suspended the payment of the interest on a loan formerly contracted in Holland whilst she was at war with France, of which Holland had become a province. Yet these are not examples for imitation. The seizure without violence of property belonging to the offending Government and not to individuals would, I think, be legitimate in some cases." (Mr. Gallatin to Mr. Everett, Jan. 5, 1835, 2 Gallatin's Writings, 476, quoted Moore's Digest 7, 121).

Before disregarding the requirements of the Fifth Amendment, and the honorable history of this nation, the

Court should be satisfied beyond the peradventure of a doubt that Congress was engaged in undertaking an act of war in the form of a reprisal and that it is empowered to do this with respect to the selected property of a few private individuals. Such a power we respectfully deny, and there is no evidence that Congress ever considered that it was exerting the reprisal power. The honorable traditions of this nation should not be thus casually changed and a justification given which Congress never thought of. The effect would be quite as damaging as those mentioned in the arguments of John Bassett Moore, with which this rebuttal brief will close.

POINT II.

In view of the language of the Knox-Porter Peace Resolution, it is immaterial that Germany has or has not made suitable provision for the satisfaction of American claims, although Congress acted on the assumption in 1928 that "suitable provision" had been made.

The Knox-Porter Peace Resolution (Brief of Respondent, p. viii. of Appendices) provides:

> "All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whasoever, * * * shall be retained

> by the United States of America and no disposition thereof made, except as shall have been heretofore or *specifically hereafter shall be provided by law* until such time as the Imperial German Government * * * shall have * * * made suitable provision for the satisfaction of all claims against said (Government) * * *." (Italics ours.)

The Knox-Porter Peace Resolution is repeated in the Treaty of Berlin (brief of respondent, p. xxxi, of Appendices).

The modifying language

> "except as shall have been heretofore or specifically hereafter shall be provided by law",

needs no argument to show that when, seven years after the date of the Joint Resolution of 1921, Congress passed the Settlement of War Claims Act, that Act constituted one of the exceptions mentioned in the Joint Resolution, so that its necessary effect was that it was thereby "provided by law" that such property, to the extent to which its return was ordered, thereby should no longer be held by the United States.

POINT III.

Congress had determined at the time of the passage of the Settlement of War Claims Act that Germany had made "suitable provision" for the satisfaction of American claims.

Taking for granted that the provision referred to under Point II of this brief is immaterial and that Congress in-

tended to hold the property until "suitable provision" had been made by Germany for the satisfaction of claims against it, Congress effectually determined that such "suitable provision" had been made.

The Settlement of War Claims Act was passed after Germany admitted to the Allies its complete incapacity to pay the enormous claims that the Allies had set up against Germany. This admitted incapacity resulted in 1924 in the appointment of the Dawes Commission to ascertain Germany's capacity to pay, and the investigation by the Dawes Commission resulted in the Paris Agreement, by virtue of which the United States received for the satisfaction of the claims of American nationals against Germany 2¼% of the reparation payments. (Hearings before Committee on Ways and Means, and Committee on Interstate and Foreign Commerce, 69th Congress, 1st Session, April 5 to 14, 1926, p. 23.)

Thereupon, in 1926 the Administration proposed of its own motion to return the German property, because it was recognized to be contrary to American interests to hold private property as security for a public debt. The wisdom of the fathers, notably Hamilton, had shown the destructiveness of such a policy. Messrs. Mellon and Mills, therefore, urged that the property be at once returned in full to its rightful owners. (Hearings before Committee on Ways and Means and Committee on Interstate and Foreign Commerce, 69th Congress, 1st Session, April 5 to 14, 1926, pp. 200 *et seq.;* Hearings before Committee on Ways and Means, House of Representatives, 69th Congress, 1st Session, April 16, 26, 28, and May 5, 1926, p. 76.) The objections of the American claimants made some compromise with principle necessary, so that in 1928

an inter-party agreement was reached, which was embodied in the Settlement of War Claims Act [on the basis of which Congress passed the Settlement of War Claims Act providing for mutual concessions (referred to on page 44 of respondent's brief)], whereby, amongst other things, 50% of the awards for German ships and patents should be applied to the payment of American claims, the 26 million dollars of unallocated interest fund in the hands of the Treasury should also apply to the payment of American claims, and likewise the annual 14 million dollars of Dawes' payments.

This was fully explained to Congress at Hearings before the Committee on Ways and Means of the House of Representatives, 69th Congress, Interim 1st and 2nd Session, November 15 to 24, 1926, page 390. It was there explained that American representatives went to Paris and agreed that Germany could not do any more than was provided for in the Paris Agreement, and Congress, having heard these proofs, and having before it the Paris Agreement, and having received the agreement made between the American claimants and the German claimants, enacted the Settlement of War Claims Act and thus, by approving the agreement thus made between the American claimants and German claimants, determined that "suitable provision" had been made in accordance with the Knox-Porter Peace Resolution. In other words, "suitable provision" did not mean payment, but meant provision for payment under the circumstances.

Thus, having amended the Trading with the Enemy Act by the Settlement of War Claims Act, thereby providing, amongst other things:

> for certificates to be issued to German owners with property in the Special Deposit Fund, consisting partly of the retained 20% (Section 25),

and

> for attachments of claims of creditors of the German owners (Section 30),

Congress indicated the complete vesting of the beneficial title in the former German owners—a title very similar to that acquired by an applicant for Government land patents upon allowance of his claims and before the actual transfer of the property, the subject of the patent, to the applicant. (*Wirth* v. *Branson,* 98 U. S. 118.)

POINT IV.

The return of enemy property was not a mere gratuity.

On page 4 of the reply brief of the petitioners, it is contended that the respondent has not demonstrated in its former brief that the Settlement of War Claims Act is not an act of grace.

In respondent's previous brief (page 72), reference is made to the case of *Williams* v. *Heard,* 140 U. S. 529, and we quoted the very important language therein contained with reference to the distribution of the unappropriated moneys from the Geneva award:

> "There is no element of a donation in the payment ultimately made in such cases."

It has been repeatedly pointed out by leading text writers of international law* that until the Great War of 1914-1918 it was not the practice of civilized nations, and was a violation of international law, to indulge in confiscation of private property.

We also pointed out (page 9 of respondent's brief), that on February 8, 1917, President Wilson, in response to suggestion that the Germans would withdraw their property in accordance with the Treaty of 1828, (8 Stat. 378) announced to the world that

> "The Government of the United States will in no circumstances take advantage of a state of war to take possession of property * * *. *It will scrupulously respect all private rights alike of its own citizens and of the subjects of foreign states.*" (Italics ours.)

If there is any language which creates an estoppel on our Government, moral and, therefore, legal, it is this assurance of its President, causing German nationals to allow their property to remain here because their "private rights" would be "scrupulously" respected.

Could language be clearer to negative the extraordinary argument (pp. 14-15, Petitioner's Reply Brief) that

> "it is difficult to understand how any claimed rights of respondent with respect to this property can be said to be private property such as the Fifth Amendment is intended to protect"?

The petitioners now take the position that such return is a mere gratuity and not the observance of an honorable obligation.

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*"International law is part of our law," The Paquete Habana, 175 U. S. 677, 700.

If there is such obligation, in international law, in the national tradition, in the honorable observance of solemn promises of the President, how can the petitioners contend that the return of the property thereof was a mere kindness on the part of our Government?

POINT V.

The consent required by Section 9, Subsection (m), was not an idle ceremony.

Contending that the direction for the return of 80% of the German property was a mere gratuity, the petitioners claim that no contract arose between our Government and the German owner upon the filing of the consent required by Section 9, subsection (m), and that there was no consideration in law given by the former owner when he filed this consent to the retention of 20% of his property.

Under a previous point, we have shown that the return of the property was an honorable, moral obligation on the part of the Government. It was also elementary self-interest, as the Secretary of the Treasury contended. This obligation may not have been enforceable if Congress desired to confiscate the property.

We have also pointed out that the prevailing rule of international law was against confiscation and that the United States committed itself to return the property by the Act of 1928. Under this Act, a German owner was recognized as such by Congress, and was given the legal right to demand the return of the property. The very fact that his consent to the temporary retention of 20% was asked, is an admission and recognition of his status as an owner.

Therefore, whatever may have been his strict legal right theretofore to make an enforceable demand, an ample consideration for the return of 80% was found in the surrender of his claims then also to receive the 20%.

POINT VI.

The provision in the Treaty of Versailles that a German national should look to his government for compensation, was fully considered by Congress and waived by it.

The petitioners contend that a German national should look to his Government for compensation and that the Treaty of Versailles so provides and, therefore, the German national has no rights against our Government.

This contention is based on the false assumption that Congress had already confiscated the property. Only then could the claim against Germany arise.

Prior to the enactment of the Settlement of War Claims Act, this provision was fully considered by Congress. In answer to the question put to it by our Department of State, on April 20, 1926 the representative of the German Government made the following statement (69th Congress, 2nd Session, Document No. 191, p. 18):

> "German nationals whose property in the United States was taken over by the Alien Property Custodian under the trading with the enemy act have not received any compensation under the laws quoted in the annex and are not entitled thereto for the

> reason that their property has not been confiscated, but is merely being retained by the United States. If such property were to be confiscated by the United States they would thereby become entitled to the same rates as allowed to Germans whose property was confiscated by the allied powers. As, however, the assets held by the United States consist almost exclusively of cash and securities the percentage to be applied would, with a few exceptions, be 2 per cent of the pre-war value for assets not exceeding 200,000 marks in each particular case and two-tenths of 1 per cent for all amounts exceeding this figure."

Germany's incapacity to pay its foreign debts was fully understood by Congress, yet, with all these facts before it, Congress passed the Settlement of War Claims Act revesting the beneficial title in the former German owners. As pointed out in the brief of the respondent (p. 95), this clause of the Versailles Treaty is purely illusory and Congress so regarded it. It cannot be considered as a substitute for property which Congress repeatedly said was not to be confiscated.

With all these facts before it, the report of the Senate Committee on Finance, 70th Congress, 1st Session, Report No. 273 (p. 5), states:

> "The bill provides for the *immediate* return of 80 per cent of the property now held by the Alien Property Custodian. This percentage was reached in the *agreement* above referred to and the parties affected are satisfied with it." (Italics ours.)

The word "immediate" is very important.

POINT VII.

Congress having provided for the immediate return of 80% of the property, it cannot be contended that this constitutes no obligation and that the few claimants who, through third party attachments and the like, suffered delay, are now subject to having their eighty per cent retaken or withheld.

The petitioners' brief and reply brief under-estimate the force of the commitments made by the United States with respect to this property. The effect of their argument is to contend either that the property has already been confiscated, or that the right to confiscation has been fully reserved. This is contrary to the historical record of what Congress has done in these cases. In addition, the petitioners make arguments as to confiscation which all departments of the Executive have rejected.

Petitioners state (pp. 14-15 of the reply brief):

> "Under the Treaty of Berlin, the property has been, in a sense, dedicated to the satisfaction of the obligations of the German Government. Under these circumstances, it is difficult to understand how any claimed rights of respondent with respect to this property can be said to be *private* property such as the Fifth Amendment is intended to protect."

It now seems fashionable to disregard the rights of private property and the obligation of contract. The mere fact that some branch or branches of the Government may wish to pursue an unlawful course is in many quarters deemed an ample defense against challenge. That this

will ultimately break down all our institutions seems not to be appreciated. It was fully appreciated by the founders of this Government, and it has always been the function of this Court to preserve those fundamental principles without which it is not possible for any government long to continue to function.

It has been shown in the respondent's original brief that Congress, at the request of the Administration, from 1926 to 1930 determined not to act upon the suggestion of the present petitioners that private property is "dedicated to the satisfaction of the obligations of the German Government". Their suggestion flouts the specifically declared intention of Congress from the very beginning in dealing with this problem.

But the argument is also unsound, for while Congress had certain privileges to confiscate under the Treaty of Berlin, it specifically refused to avail itself of those privileges. It refused to embark on the dishonorable policy of confiscating private property for the satisfaction of public debts. Yet the present petitioners blandly assert that under the Treaty of Berlin "the property has been, in a sense, dedicated to the satisfaction of the obligations of the German Government". That is precisely what the Settlement of War Claims Act and the Debt-Funding Agreement negative. They were designed to prevent any such assumption and to act on the contrary principle that we would respect the rights of private property, as President Wilson had said we would.

The petitioners, under the theory that the property is already as good as confiscated, necessarily therefore conclude that title to the still unreturned property amounting to a trifling percentage of the total amount seized has al-

ready vested in the United States, and they naturally infer that it is no longer "private property" at all. It would seem as if this argument ought to fall of its own weight, for everything in the record shows that Congress regarded it as private property from the very beginning and confirmed that view in the Settlement of War Claims Act.

The only issue here, therefore, is whether Congress can take back in time of peace what it has already returned, apply it to the few unlucky owners against whom third party attachments had been brought, and then give the President the discretionary power to select from among these few the specially favored aliens who, notwithstanding the Harrison Resolution, might still receive their property at his hands.

It would be well, in considering the arguments of the petitioners, to consider the views expressed upon them by the greatest living authority on these subjects. We refer to John Bassett Moore. In his work on International Law and Some Current Illusions published in 1924, (pp. 24-25) he has expressed in classic language his unfavorable view of the arguments of the petitioners. Judge Moore says:

> "The subject has also another aspect. During the past ten years the investments abroad of citizens of the United States have enormously increased, and the process has only begun. Considering the question, therefore, purely as one of selfish calculation, I venture to think it directly contrary to the interests of the United States to resuscitate the doctrine that enemy private property found in a country on the outbreak of war may be confiscated. Such a doctrine might even create a temptation.
>
> "But there is yet another and higher reason. The United States has an honorable past as well as an expedient future to consider.

"Of all the illusions a people can cherish, the most extravagant and illogical is the supposition that, along with the progressive degradation of its standards of conduct, there is to go a progressive increase in respect for law and morality. Again may we remark that 'there is no new thing under the sun.' The world never will be rid of the problem of preserving its elementary virtues. Three hundred years ago Grotius declared that, as he who violated the laws of his country for the sake of some present advantage to himself, 'sapped the foundation of his own perpetual interest, and at the same time that of his posterity,' so the people that 'violated the laws of nature and nations' broke down 'the bulwarks of its future happiness and tranquillity.'

"No less pertinent is the confession of Alexander Hamilton, made a century-and-a-quarter ago, that, serious as the evil of war had appeared to him to be, yet the manner in which it might be carried on was in his eyes 'still more formidable.' It was, said Hamilton, 'to be feared that, in the fermentation of certain wild opinions, those wise, just, and temperate maxims, which will forever constitute the true security and felicity of a state, would be overruled,' and that, one violation of justice succeeding another, measures would be adopted which even might 'aggravate and embitter the ordinary calamities of foreign war.'"

As recently as January, 1937, in the Harvard Law Review, Judge Moore has again expressed his condemnation of the emotional hypocrisy which pursues evil practices under righteous pretenses. We venture to quote from Judge Moore's article entitled "Fifty Years of International

Law", pages 419 to 421 (Harvard Law Review, Vol. L, No. 3, January, 1937):

> "Prior to the Versailles and associated treaties the development of international law had for centuries run in the direction of exempting private property from confiscation, not out of regard for insensate things but in the belief that it was in the general interest that war-stricken peoples, instead of being plundered and permanently disabled, should be permitted to resume the normal processes of peaceful life without delay. In the recent war this principle began to be questioned, and in the making of peace it was broadly disregarded on assumptions that will not bear examination. I particularly refer to the supposition that in its drafts on population and resources the recent war was unlike any previous war; that it made all work war-work and all the people war-workers in a sense never known before, and that, as it was to be taken as the type of future wars, the distinction between combatants and non-combatants and the rules deduced from it were no longer to be respected. In reality these assumptions, which I do not hesitate to pronounce essentially unfounded, represent a reversion to the ancient conception that all the inhabitants of states at war, including women and children, are to be regarded, collectively and individually, as actual enemies so that they may be lawfully slaughtered or reduced to slavery and their property captured and confiscated or destroyed. In protesting against this barbarous theory, Grotius quoted the great Roman historian Livy, who censured the 'savage cruelty and rage' of those who practiced it. There never was, indeed, a time when in great conflicts the belligerents did not draw upon and coordinate all their resources for hostile purposes; and the losses

of life and property in the recent war were relatively less than those in various earlier wars.

"The distinctive designation of the recent conflict as 'the world war' or the 'first' world war merely exemplifies the want of knowledge or carelessness of those who thus speak. Although nations at war formerly reached their objectives more slowly, they gained them not less surely, and empires were won and lost by the European powers in conflicts in which they engaged face to face in Europe, in America, in Africa, and in Asia. As examples it suffices to mention the Seven Years' War, the wars growing out of the French Revolution, and the Napoleonic wars. It was because they knew war's universal drain and reactionary tendencies that the earlier writers sought not only to limit the taking of life but also to restrict the destruction and confiscation of property.

"Nevertheless, soon after the outbreak of the recent war the belligerent governments one after another proceeded to assume control of or, as was generally said, to 'intern' enemy private property found within their jurisdiction. The United States, on entering the war, imitated its associates by enacting a law for the provisional seizure of enemy property, which was to be held by an official styled the Alien Property Custodian, whose function was defined as that of a trustee. Subsequently, however, there came a special revelation, perhaps not divinely inspired, to the effect that the foreign traders and manufacturers, whose property had been seized, had for years been making their investments in the United States not from ordinary motives of profit but in pursuance of a hostile design, never before suspected, to enrich themselves by ruining American traders and manufacturers; and on this thrifty but disreputable pretext the Government of

the United States, disregarding the injunctions of its earlier statesmen and its own honorable past, yielded to a patriotic call to a retributive but profitable war on the malefactors' property, and departures were progressively made from the principle of trusteeship. In other countries, including Great Britain, a similar departure from prior enlightened practices was made.

"What happened to enemy private property during and after the late war may serve to accentuate the duty of each generation to consider its conduct and search its motives, under a deep sense of its responsibility to future generations and uninfluenced by that emotional hypocrisy which so constantly facilitates a reversion to evil practices under righteous pretenses."

We respectfully submit that the judgment of the Court below should be affirmed.

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